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Case No. 07-962

IN THE
Supreme Court of the United States

CAVEL INTERNATIONAL, INC., *et al.*,

Petitioners,

v.

LISA MADIGAN, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE* KINGDOM OF BELGIUM IN SUPPORT OF PETITIONER CAVEL INTERNATIONAL, INC.

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INTEREST OF *AMICUS CURIAE*

The Kingdom of Belgium is a founding member of the European Union (EU).[1] Among the many purposes of the EU is the promotion and maintenance of free and open trade between Europe and its trading partners, prominent among which is the United States. The Kingdom is thus deeply committed to the maintenance of open trade relationships with its global trading partners.

The Kingdom of Belgium seeks to regulate the conduct of US-Belgian trade relations through international agreements, including but not limited to the General Agreement on Tariffs and Trade 1994 (GATT), the Agreement Establishing the World Trade Organization (WTO), and the various multilateral trade agreements that are integral

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* Kingdom of Belgium states that Petitioner Cavel International, Inc. initially contacted the Kingdom through a business representative in Belgium, requesting submission of an *amicus* brief on its behalf. The Kingdom, in turn, retained Squire Sanders & Dempsey L.L.P., which serves as the Kingdom's usual outside counsel and which subsequently drafted the present brief. Counsel of record for Petitioner Cavel is also an attorney at Squire Sanders. No attorney at Squire Sanders who participated as counsel for Petitioner Cavel at any stage of this matter has had any involvement in the drafting of the Kingdom's brief in whole or in part. No person other than *amicus curiae*, its members, or its counsel has made a monetary contribution to the preparation or submission of this brief.

Pursuant to Supreme Court Rule 37.2, the Kingdom states that it timely notified all parties of its intent to file an *amicus* brief in support of Petitioner Cavel's petition and that consent to file was granted by all parties.

parts of the WTO Agreement. When they arise, the Kingdom desires trade disputes with the United States to be resolved according to such treaties and in negotiation with a single national representative empowered to speak for the United States—not fifty individual states, of which Illinois is but one.

Petitioner Cavel International, Inc. (Cavel), based in DeKalb, Illinois, is ultimately owned by a Belgian national. Prior to Illinois House Bill 1711 (H.B. 1711), which was signed into law on May 24, 2007, Cavel was in the business in Illinois of producing horsemeat for human consumption outside the United States. The Kingdom is a traditional horsemeat consuming and importing country. Cavel was the sole company in this market in Illinois and in the United States as a whole at the time H.B. 1711 was enacted into law. Naturally, the Kingdom has inherent interest in trade restrictions that significantly impact—indeed fatally imperil—Belgian companies' trade and operations abroad, including those of Cavel.

By reason of the foregoing, *amicus curiae* Kingdom of Belgium expresses concern regarding the impact of H.B. 1711 on the international trade of horsemeat and on the US operations of a Belgian enterprise. In short, the Kingdom believes that H.B. 1711 impinges upon US trade obligations to the Kingdom and the EU as set forth in the GATT and other applicable treaties.

SUMMARY OF ARGUMENT

The Kingdom of Belgium imports and consumes significant quantities of horsemeat for human consumption from the United States. American horsemeat is considered by consumers in Belgium and elsewhere in the EU to be of the highest quality and distinguishable from horsemeat produced from other nations. Petitioner Cavel International, Inc. is owned by a Belgian national, is based in DeKalb, Illinois, and was the sole producer/exporter in the United States of US horsemeat for human consumption.

Adoption of H.B. 1711 by the State of Illinois acts as an export ban on horsemeat for human consumption, is inconsistent with US treaty obligations to Belgium and the EU under the GATT, and is potentially actionable by the WTO. In upholding the constitutionality of H.B. 1711, the US Court of Appeals for the Seventh Circuit incorrectly determined, *inter alia*, that the Illinois state law would not impinge US international obligations.

The court of appeals' decision in this case raises significant issues as regards US obligations under GATT and other relevant accords, which in turn give rise to economic and diplomatic concerns for the Kingdom. For this reason, the Kingdom of Belgium requests that this Court grant certiorari and consider this important matter of international law and commerce touching on the federal government's authority to regulate the foreign commerce of the United States.

ARGUMENT

The Kingdom of Belgium is a longstanding consumer and importer of horsemeat for human consumption (hereinafter "horsemeat"), an import commodity recognized by the EU as combined nomenclature (CN) 0205. In the Kingdom and the EU more generally, consumption of horsemeat is popular and common, but European supplies are insufficient to meet demand.

Consequently, the United States served as the EU's third largest supplier of horsemeat, and, as of 2005, the United States served as the seventh largest producer of such horsemeat globally. Based on its 2006 import value, the de facto export ban on horsemeat will affect imports to the value of approximately € 28.3 million[2] annually.

Not only does American horsemeat occupy a significant proportion of European and global trade in that commodity, but also it is uniformly recognized as of the highest quality and distinguishable from horsemeat originating from other countries. Alternative sources of supply—such as from South America or Australia—do not compare to the quality of US horsemeat. Thus, a significant portion of EU consumers will only consume horsemeat originating from the United States.

Significantly, not only will the Illinois law prevent trade flows of horsemeat between the United States and the EU, but the prohibition will, in turn,

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[2] Approximately $41.6 million, as of January 2008.

also demonstrably affect the ability of European purveyors to service non-EU markets, such as Switzerland, where EU purveyors—and Belgian purveyors, in particular—enjoy substantial market share.

Consequently, following passage of H.B. 1711, the Kingdom took the highly unusual step of making its concern directly known to Illinois Governor Rod Blagojevich in a letter dated June 11, 2007. In that letter, the Kingdom advised Gov. Blagojevich that Belgium had considerable interest in horsemeat exports from Illinois and therefore would be "carefully scrutinizing the compatibility of House Bill 1711 with international trade rules, including those existing under the World Trade Organization."

Having undertaken such scrutiny, the Kingdom is concerned that H.B. 1711 may constitute a ban on exports and fall within the prohibition in Article XI of the GATT. *See* General Agreement on Tariffs & Trade 1994 art. XI:1, 55 U.N.T.S. 194, 224 ("No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any member on the importation of any product of the territory of any other member or on the exportation or sale for export of any product destined for the territory of any other member."). The Illinois ban on production of a good that is produced exclusively for exportation seems effectively to operate as a ban on exportation. The action taken by the State of Illinois is attributable to the United States as a WTO member.

Additionally, the Kingdom observes that the export ban also impinges upon other international agreements binding upon the United States. *See, e.g.*, North American Free Trade Agreement, 19 U.S.C. § 3301 *et seq.* (imposing obligation to eliminate trade barriers in agricultural goods, including horsemeat); Agreement Between the United States of America and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products, 9 C.F.R. § 94 *et seq.* (providing that equine products, including horsemeat, may transit through the United States for export).

The US Court of Appeals for the Seventh Circuit acknowledged that "[f]oreign commerce is pre-eminently a matter of national concern" and that "'[i]n international relations and with respect to foreign intercourse and trade the people of the United States act through a single government with unified and adequate national power.'" *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551, 558 (7th Cir. 2007) (quoting *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 448-51 (1979) (quoting *Board of Trustees of Univ. of Ill. v. United States*, 289 U.S. 48, 59 (1933))). The Kingdom agrees.

Consequently, the Kingdom requests that this Court grant certiorari and consider this important matter of international law and commerce touching on the federal government's authority to regulate the foreign commerce of the United States.

CONCLUSION

For the reasons set forth above and in Petitioners' brief, this Court should grant the Petition for a Writ of Certiorari requested in this case.

Respectfully submitted,

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